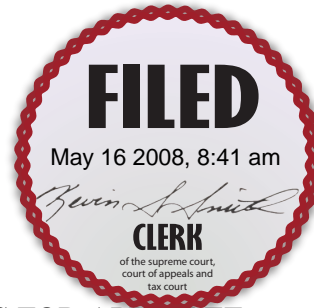


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ROBERT J. BRATCH
Marion, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ARTHUR THADDEUS PERRY
Special Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

AYRON SAYLORS,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 27A02-0708-CR-664
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE GRANT CIRCUIT COURT
The Honorable Mark Spitzer, Judge
Cause No. 27C01-0611-FA-175

May 16, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Ayron Saylor appeals his convictions for class A felony burglary resulting in bodily injury, class B felony robbery with a deadly weapon, and class B felony conspiracy to commit robbery. We affirm.

Issue

Did the trial court abuse its discretion when it excluded certain testimony?

Facts and Procedural History

At approximately 3:00 a.m. on November 3, 2006, Candice Smith and Kylie Atkins were at a friend's house when Kevin Vandiver told them that he knew where they could get some prescription drugs. Smith, Atkins, and Vandiver drove to a nearby trailer park, and Vandiver pointed out Teresa and Leroy Rochester's trailer. Later, after Smith and Atkins dropped Vandiver off, the women agreed that they would break into the Rochesters' trailer and steal their prescription drugs. Smith and Atkins went to Smith's house to get dark clothing, and they purchased a BB gun at Wal-Mart. When they decided that they needed the assistance of a man, they called Saylor and asked him to help. He met with them a few minutes after their call.

Smith, Atkins, and Saylor drove Smith's vehicle to the Rochesters' trailer. They parked the car and put on dark clothes, gloves, and masks. Saylor was carrying the BB gun. He kicked open the trailer door, and the three intruders entered the trailer. Leroy stood in front of the bedroom door and attempted to block them from entering the room. Saylor hit Leroy in the head with the gun. Leroy fought back for a short time but then fell to the floor. Teresa sat on the bed and screamed. Saylor stood over Leroy with the gun and hit him in

the head with it several times while Smith and Atkins searched the residence for prescription drugs. After finding several bottles of pills, Smith, Atkins, and Saylor left the trailer, ran to their vehicle, and drove away.

When Marion Police Department officers arrived at the crime scene, Leroy told them that someone had kicked open his trailer door, waking him and Teresa. Leroy had seen three intruders, one man and two women. The man had instructed the women to find OxyContin pills. Apparently, the Rochesters have numerous medical conditions, and they both take prescription painkillers.

Police also interviewed the Rochesters' neighbor, Mary Stevens. She had heard the car pull up, listened to the commotion coming from the Rochesters' trailer, and watched from her window as the intruders ran to their vehicle and drove away. She gave police the names of two former residents of the trailer park—Nick Smithson and a girl named Ashley—that she suspected might be involved in the crimes. She had also written down a partial license plate number and a description of the getaway car. Police matched this information to a vehicle registered to Ronald Smith. When police visited the address on the registration, Ronald's mother told them that he was away on military service and that Candice Smith was using the vehicle. When police located Smith, she was with Atkins. Both women agreed to go to the police station for interviews. While being questioned, Smith admitted to police that she, Atkins, and Saylor had broken into the Rochesters' trailer and stolen prescription drugs.

On November 9, 2006, the State charged Saylor with class A felony burglary resulting in bodily injury, class B felony robbery with a deadly weapon, and class B felony conspiracy to commit robbery. Saylor's jury trial began on May 14, 2007. John Bowman,

Saylor's close friend and his cousin's husband, testified that Atkins had called Bowman's house looking for Saylor in the early morning hours of November 3, 2006. Saylor took the call and told Bowman that Atkins "knew where he [could] go get some money or hit a lick [commit a robbery] or whatever." Tr. at 364. Saylor left Bowman's house right after the call from Atkins. He called Bowman later that morning, stating that he had "done something stupid" and "had to get out of town[.] *Id.* at 365-66. Saylor also talked to Bowman about his plan to travel to Kentucky in an attempt to mislead police as to his whereabouts on the date of the crimes. On May 17, 2007, the jury found Saylor guilty on all counts. He now appeals.

Discussion and Decision

Saylor contends that the trial court erred in excluding hearsay evidence, namely Mary Stevens's statements to police that the Rochesters "sell pills" and that she thought that Smithson and "Ashley" might be involved because she had heard that "Ashley" had bought pills from the Rochesters in the past. *Id.* at 81-82. Saylor argues that the admission of this evidence would have "helped to connect further evidence regarding conspiracy to commit the crime by the co-conspirators [Smith and Atkins]." Appellant's Br. at 8.

Our standard of review is well settled.

The admission or exclusion of evidence is a matter within the sound discretion of the trial court. An abuse of discretion occurs if a trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. Hearsay is generally not admissible unless it falls within one of the hearsay exceptions.

Rolland v. State, 851 N.E.2d 1042, 1045 (Ind. Ct. App. 2006) (citations omitted). Moreover, a claim of error in the admission or exclusion of evidence will not prevail on appeal unless a

substantial right of the party is affected. *Oldham v. State*, 779 N.E.2d 1162, 1170 (Ind. Ct. App. 2002), *trans. denied* (2003). We will affirm the trial court’s ruling if it can be done on any legal grounds apparent in the record. *Ross v. State*, 676 N.E.2d 339, 345 (Ind. 1996).

On the first day of trial, outside the presence of the jury, the State presented an oral motion in limine, requesting the court to prohibit Saylor from presenting evidence that the Rochesters were known to sell prescription drugs out of their trailer prior to this robbery. Saylor argued that such evidence was relevant as to “how this quote conspiracy unquote start[ed].” Tr. at 51. The trial court granted the State’s motion in limine “for purposes of mentioning in opening statement and, um, up until the time that we ... we have this witness[’s] testimony and I’m suggesting we may want to take some of her testimony out of the hearing of the jury to develop this case.” *Id.* at 52.¹

At trial, Stevens testified that on the morning of the robbery, she had looked out her window and written down most of the license plate number of the vehicle parked near her trailer during the incident. She also recounted how she had told police that she believed Smithson and “Ashley” might have been involved because she had “heard that they had tried to break into [the Rochesters’] home ... [n]ot a whole long time before that.” *Id.* at 82. During Stevens’s cross-examination, the trial court held a bench conference at Saylor’s request. Saylor’s counsel again challenged the State’s motion in limine regarding evidence that the Rochesters were selling drugs from their trailer. The court stated that Stevens’s

¹ For purposes of the motion in limine, it appears that the trial court and the attorneys focused upon the anticipated testimony of Candice Smith. It is Mary Stevens’s proffered testimony that is at issue in this appeal, however.

anticipated testimony on this point was hearsay and thus inadmissible because it did not fall within any hearsay exceptions. Saylor's counsel then made an offer of proof to the effect that Stevens would testify that "by reputation [the Rochesters] sell the pills and that Ashley bought them. That's why [Stevens] told the police that and that's going to lead up to other evidence as to why [the Rochesters] were targeted by these two girls." *Id.* at 84.

Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Ind. Evidence Rule 801(c). Hearsay is not admissible unless it falls within an exception as provided by law or by the evidence rules. Ind. Evidence Rule 802. Saylor contends that Stevens's testimony about someone else's statement that the Rochesters were drug dealers and that "Ashley" had bought drugs from them in the past is admissible because it is offered not to prove the truth of the matter asserted but rather to show "the state of mind of the co-conspirators in the formulation of their plan to commit the crime." Appellant's Br. at 7.

If a statement is offered for a purpose other than to prove the truth of the matter asserted, we must consider the relevance of the fact to be proved. *Vertner v. State*, 793 N.E.2d 1148, 1151-52 (Ind. Ct. App. 2003). If the fact sought to be proved under the suggested non-hearsay purpose is not relevant, or if it is relevant but its danger of unfair prejudice substantially outweighs its probative value, the hearsay objection should be sustained. *Id.* at 1152; *Craig v. State*, 630 N.E.2d 207, 211 (Ind. 1994).

Here, Saylor claims that he offered Steven's testimony that she had heard the Rochesters sold drugs as evidence of Smith and Atkins's states of mind while planning to commit these crimes. We fail to see how their states of mind are at all relevant to a jury's

determination of whether Saylor committed the crimes for which he was charged. At the very least, it is clear that the danger of unfair prejudice in characterizing the victims as drug dealers substantially outweighs any probative value of this evidence.

Saylor also contends that the testimony should have been admitted pursuant to Indiana Evidence Rule 801(d)(1)(C), which says that a statement is not hearsay “if ... the declarant testifies at the trial ... and is subject to cross-examination concerning the statement, and the statement is ... one of identification of a person made shortly after perceiving the person[.]” Saylor’s argument on this point is not persuasive. The “declarant” in this instance is the person who told Stevens that “Ashley” had previously bought drugs from the Rochesters. That person did not testify at trial. Therefore, Indiana Evidence Rule 801(d)(1)(C) does not apply, and again, the statement is irrelevant. The trial court did not abuse its discretion in excluding this portion of Steven’s testimony.

Finally, Saylor has failed to prove that one of his substantial rights was affected by the exclusion of Stevens’s statements. Smith and Atkins testified that Saylor participated with them in the crimes, and his close friend John Bowman testified as to Saylor’s admissions to him and Saylor’s discussion of his plans to mislead police as to his whereabouts on the date of the crimes. “[Any error in the exclusion of evidence] is harmless if the evidence of guilt was overwhelming and the defendant was allowed to present his defense even if not as completely as he desired.” *Miles v. State*, 777 N.E.2d 767, 772 (Ind. Ct. App. 2002).

For all the reasons set forth above, we conclude that the trial court acted within its discretion in excluding this portion of Stevens's testimony. We hereby affirm Saylor's convictions.

Affirmed.

BARNES, J., and BRADFORD, J., concur.